

Departmental Disclosure Statement

International Crimes and International Criminal Court Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Foreign Affairs and Trade.

The Ministry of Foreign Affairs and Trade certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 November 2019

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Part One: General Policy Statement

This Bill makes amendments to the International Crimes and International Criminal Court Act 2000 (the Act) to incorporate a series of amendments made to the Rome Statute of the International Criminal Court (Rome Statute) concerning war crimes (war crimes amendments).

The war crimes amendments were adopted at the June 2010 Review Conference of the Rome Statute at Kampala, Uganda and at the 16th Session of the Assembly of States Parties to the Rome Statute in December 2017 at New York, United States. The war crimes amendments expand the list of war crimes subject to the International Criminal Court's jurisdiction, and allow the Court to hold individuals criminally responsible for them. The amendments make it a war crime to employ—

the following in a non-international armed conflict:

- poison or poisoned weapons;
- asphyxiating, poisonous, or other gases, and analogous liquids, materials, or devices;
- expanding bullets; and

the following in both international and non-international armed conflicts:

- weapons which use microbial, biological agents, or toxins;
- weapons that injure by fragments that are undetectable by X-rays;
- blinding laser weapons.

The Bill will enable New Zealand to ratify these amendments to the Rome Statute, and allow proceedings to be brought in New Zealand for these offences, under section 8 of the Act.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
See International treaty examination of the War Crimes Amendments to the Rome Statute of the International Criminal Court, Report of the Foreign Affairs, Defence and Trade Committee, June 2019 https://www.parliament.nz/en/pb/sc/reports/document/SCR_89365/international-treaty-examination-of-the-war-crimes-amendments	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
The Bill incorporates provisions of the Rome Statute of the International Criminal Court, in particular, Article 8(2)(e)(xiii)-(xv), Article 8(2)(e)(xvi)-(xviii) and Article 8(2)(b)(xxvii)-(xxix). This text of the Rome Statute is contained in the Schedule to the Bill.	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
See National Interest Analysis: Rome Statute of the International Criminal Court - War Crimes Amendments, Ministry of Foreign Affairs and Trade. https://www.parliament.nz/resource/en-NZ/SCR_89365/73e4f00dfdb235ff86f577d2527a345a249e8b1f	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Costs and benefits to New Zealand were considered as part of the extended National Interest Analysis prepared by the Ministry of Foreign Affairs and Trade, linked in 2.2.1 above.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Bill makes amendments to New Zealand law necessary for it to ratify the war crimes amendments to the Rome Statute of the International Criminal Court. MFAT considers that the policy given effect by the Bill is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

As the policy contained in the Bill will add specific war crimes to those listed in the principal Act, it will not impact upon the government's Treaty of Waitangi obligations.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Advice provided to the Attorney-General is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice and reports are accessible on the Ministry's website at:

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>Clause 4 of the Bill amends the definition of 'international crimes' in the International Crimes and International Criminal Court Act 2000 (the principal Act) to include:</p> <ul style="list-style-type: none"> - the use of the following in non-international conflicts: <ul style="list-style-type: none"> • poison or poisonous weapons • asphyxiating, poisonous, or other gases, and analogous liquids, materials, or devices • expanding bullets. - the use of the following in both international and non-international conflicts: <ul style="list-style-type: none"> • biological weapons • weapons or munitions designed to injure with fragments that escape detection by x-rays • laser weapons specifically designed to cause blindness. <p>The effect of this would be that proceedings may be brought in New Zealand for the above acts, under section 8 of the principal Act regarding war crimes. Proceedings may be brought in respect of these acts regardless of the nationality or citizenship of the person accused, or whether or not any act forming part of the offence occurred in New Zealand.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was provided a copy of the draft Bill in order to carry out its analysis on the compliance of the Bill with the New Zealand Bill of Rights Act 1990.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO